*** THE HON'BLE SRI JUSTICE V.ESWARAIAH**

<+ WRIT PETITION NO. 1249 OF 2005

% MONDAY THE TWENTY FIFTH DAY OF APRIL,

TWO THOUSAND AND FIVE.

K. Penchal Reddy, S/o. Ramachandra Reddy, R/o. Somasila, Ananthasagaram Mandal, Nellore District.

...PETITIONER.

Versus

$ 1. The Special Chief Secretary to Government, Revenue (Excise III) Department, Government of Andhra Pradesh, Secretariat Buildings, Hyderabad.

2. The Commissioner of Prohibition & Excise, Prohibition and Excise Building, M.J. Road, Nampally, Hyderabad.

3. The Prohibition and Excise Superintendent, Nellore, Nellore District.

4. Mr. V. Tirupal Reddy, S/o. Subba Reddy, R/o. Padamatikambhampadu village, Ananthasagaram Mandal, Nellore District.

...RESPONDENTS.

! Counsel for the Petitioner: MR. M. SHIVA KUMAR

^ Counsel for the Respondents 1 to 3: Government Pleader for Prohibition & Excise

^ Counsel for the Respondent No.4: MR SWRNA RAVI KUMAR

< Gist:

> Head Note:

? Cases referred:

1. 2001 (6) ALT 406
2. AIR 1973 SC 2720
3. AIR 1971 SC 246
4. ALT 1978 (1) 434
5. AIR 1976 SC 578
6. 1990 (1) ALT 415
7. AIR 1966 SC 828
8. AIR 1982 SC 149
9. (2000) 7 SCC 552

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL

TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 1249 of 2005

Between:

K. Penchal Reddy, S/o. Ramachandra Reddy,
R/o. Somasila, Ananthasagaram Mandal, Nellore District.

... PETITIONER

AND

1 The Special Chief Secretary to Government, Revenue (Excise III)

Department, Government of Andhra Pradesh, Secretariat Buildings,

Hyderabad.
2 The Commissioner of Prohibition & Excise, Prohibition and Excise Building, M.J. Road, Nampally, Hyderabad.
3 The Prohibition and Excise Superintendent, Nellore, Nellore District.
4 Mr. V. Tirupal Reddy, S/o. Subba Reddy, R/o. Padamatikambhampadu

Village, Ananthasagaram Mandal, Nellore District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records and issue a writ or order or direction more particularly one in the nature of Writ of Mandamus and declare that the G.O.Rt.No.2039, Revenue (Ex.III) Department dated 18-12-2004 issued by the 1st respondent is illegal, arbitrary and without jurisdiction and violative of Article 14 of the Constitution of India apart from being violative of principles of natural justice and consequently set aside the G.O.Rt.No.2039, Revenue (Ex.III) Department dated 18-12-2004 of the 1st respondent

Counsel for the Petitioner: MR.M.SHIVA KUMAR

Counsel for the Respondents 1 to 3: GP FOR PROHIBITION & EXCISE

Counsel for the Respondent No.4: MR SWARNA RAVI KUMAR

The Court made the following order:

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ORDER:

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Heard the learned counsel appearing for the petitioner, Government Pleader for Prohibition

& Excise and the learned counsel appearing for the fourth respondent.

The undisputed facts of the case are that the fourth respondent was granted licence in form IL 24 for the excise year 1997-98 in the name and style of M/s. Sreenivasa Wines at Somasila, Nellore District. The Prohibition & Excise Inspector, Atmakur, along with his staff conducted inspection at the shop of the fourth respondent and a case was registered on 14.05.1998 for the offence under Section 36 (c) of the Andhra Pradesh Excise Act, 1968 (for short 'the Act') for conducting loose sales, which is in contravention of the terms and conditions of the licence and Rule 23 (xiii) of the Andhra Pradesh Indian Liquor and Foreign Rules, 1970 (for short 'the Rules). Pursuant to that the authorities passed orders suspending his licence on 16.05.1998 and the fourth respondent filed W.P.No.14479 of 1998 challenging the suspension order, which was disposed of on 28.05.1998 directing conduct of enquiry under the provisions of the Act and take appropriate action in accordance with law. Accordingly, an enquiry was conducted and confirmed the charge of indulging in loose sale and the licence of the fourth respondent was cancelled by order dated 04.11.1998. The said cancellation was also confirmed in appeal and further appeal by appellate orders dated 10.03.1999 and 25.06.1999 respectively. More than two years after the order of cancellation and its confirmation in the appeal and further appeal, the fourth respondent preferred a revision in April, 2001, which was allowed by the Government Order vide G.O.Rt.No.952 Revenue
(Excise III) Department, dated 03.05.2001 directing the Commissioner of Prohibition & Excise to restore the licence and accordingly the Commissioner of Prohibition & Excise vide his order dated 05.05.2001 restored the licence of the fourth respondent. The revision was allowed on the benefit of doubt by the Government in favour of the fourth respondent.

Petitioner questioned the said order of the Government in W.P.No.10638 of 2002, which was allowed along with W.P.No.2679 of 2001 and batch dated 27.11.2001 in the case of **VISHAWNATHA RAVI KUMAR AND OTHERS v. GOVERNMENT OF AP, REVENUE (EXCISE) DEPARTMENT AND OTHERS**. In the said judgment, the revision orders of Government and the consequential orders of the Prohibition & Excise Superintendent, Nellore were quashed, and accordingly the licence of the fourth respondent was cancelled on 08.01.2002.

Admittedly no writ appeal has been filed against the said judgment of the learned single Judge in W.P.No.10638 of 2002 and no Special Leave Petition (SLP) was filed in the Supreme Court either by the fourth respondent or by the Government. Only the SLP's filed by some of the similarly situated persons like the fourth respondent are pending in the Supreme Court against the Division Bench judgment of this Court.

For the offences committed by the fourth respondent under Section 36 (c) of the Act read with Rule 23 (xiii) of the Rules, the fourth respondent was tried before the Criminal Court and charge sheet was filed in C.C.No.324 of 2000 on the file of the Judicial Magistrate of First Class, Atmakur, Nellore District. After trial, the court found the fourth respondent not guilty of the said offence holding that the evidence placed before the court is inconsistent, self-contradictory and no cogent and convincing reasons were put forth by the prosecution, as such on the benefit of doubt the accused/fourth respondent was acquitted under Section 225 (1) Cr.P.C. by judgment dated 30.06.2004.

After acquittal, the fourth respondent made a representation before the Government for restoration of the licence in view of the acquittal in criminal case. On the said representation the Government issued the impugned G.O.Rt.No.2039 Revenue (Excise III) Department dated 18.12.2004 permitting the Commissioner of Prohibition & Excise, Andhra Pradesh, Hyderabad to restore the licence of the fourth respondent for the excise year 2004-2005 in view of his acquittal in the Criminal Case by the Judicial Magistrate of First Class, Atmakur in C.C.No.324 of 2000, pending disposal of the Special Leave to Appeal (Civil) No.4381 of 2002 in the Supreme Court of India, New Delhi.

The said order has been suspended by this Court on 02.02.2005 in WPMP.No.1649 of 2005 in WP.No.1249 of 2005, which reads as follows:

> "*Prima facie*, it is evident that the order passed by the Government in G.O.Rt.No.952, dated 03.05.2001 was set aside by this Court in a writ petition and it was affirmed in the writ appeal. The fourth respondent did not file any S.L.P. Further, the acquittal in Criminal Case does not have any bearing on the violation in respect of which proceedings were initiated under A.P.Excise Act.
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> Hence, there shall be interim suspension of the impugned order as prayed for."

To Vacate the said order the fourth respondent filed a counter and a vacate stay petition and at the instance of the learned counsel appearing for the respective parties the matter is taken up for final disposal.

Sri P. Venugopal, learned counsel appearing for the fourth respondent submits that the licence was cancelled under Section 31 of the Act after conducting departmental enquiry for the offence committed under Section 36 (c) of the Act read with Rule 23 (xiii) of the Rules and for the self-same offence a criminal case was also tried against the fourth respondent, which ended in acquittal. Therefore, the Government having excusive privilege to confer the right to sell liquor in favour of any private individual opined that the fourth respondent being a private licensee whose licence was cancelled in the departmental proceedings, which has become final, is entitled for restoration of his licence in view of his acquittal in the said criminal case as the charges leveled against him were not proved. Therefore, the impugned order of the Government in G.O.Rt.No.2039 dated 18.12.2004 is legal and valid and the same is not contrary to any of the provisions of the Act and the Rules made thereunder.

He further submits that the Government, which is having the exclusive power to grant a licence includes the power to verify, modify, revise and restore the same and therefore, it cannot be said that the said impugned order passed by the Government is illegal and unsustainable. The petitioner being a rival trader to the fourth respondent has no *locus standi* to question the order of the Government as per the ratio laid in following judgments:

Dr. SATYANARAYANA SINHA v. M/s. S. LAL AND CO. (P) LTD, NAGAR RICE AND FLOUR MILLS v. N. TEEKAPPA GOUD AND BROS, V. NARAYANA AND BABU RAO AND OTHERS and JASBHAR NOTIBHAI DESAI v. ROSHAN KUMAR, HAJI BASHIR AHMED AND ANOTHER

On the other hand, the learned counsel for the petitioner submits that self same contentions have been advanced by the fourth respondent in W.P.No.10638 of 2001, which were negatived. Therefore, it is not open for the fourth respondent to advance the same contentions, wherein this Court held that the petitioner, who is an existing IL 24 licensee, has *locus standi* to maintain the writ petition.

It is submitted that the order of the Government restoring the licence of the fourth respondent was set aside by this Court in the said writ petition, which has become final and therefore, the said order operates as *res judicata* and the fourth respondent is not entitled to maintain another writ petition or revision before the Government and the impugned order of the first respondent is unsustainable. The writ appeals and the SLP's filed by other licensees pending before the Supreme Court would not be any of help to the fourth respondent as he has not joined in those writ appeals and no SLP is filed or pending in the Supreme Court against the said judgment of this Court in W.P.No.10638 of 2001. The said judgment has become final insofar as the fourth respondent is concerned and the acquittal in the Criminal Case is also of no help to the fourth respondent, as the departmental proceedings under the Act have become final.

As per the judgment of this Court in the case of **STATE OF AP v. B.V. NARAYANA** the acquittal in criminal proceedings initiated against a licensee cannot be a bar for the proceedings against the licensee in respect of the contravention of the conditions under Section 31 of the Act and also any of the Rules made thereunder. The criminal proceedings under Section 31 and 37 of the Act are independent and disjunctive to the departmental proceedings under Section 31 of the Act.

Insofar as *locus standi* is concerned it is pertinent to note that the Supreme Court in the case of **GADDE VENKATESWARA RAO v. GOVERNMENT OF AP** held a personal right need not be in respect of a proprietary interest: it can also relate to an interest of a trustee. That apart in exceptional cases, as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof.

In the instant case the petitioner has not challenged the order of the Government on the ground that his legal right has been infringed or affected but he has challenged the impugned order on the ground of *Ex Debito Justiae.* It is submitted that the Government has no power or authority to pass the impugned order and it is not passed in exercise of any

revisional power. Earlier orders by the Government in exercise of its revisional power have been set aside by this Court, which became final and therefore, there is no power of review or to make an order in a second revision under the scheme of the Act and the Rules made thereunder. Once the licence has been cancelled which had attained finality, in the absence of any specific provision for the restoration of the said licence, on the ground that the criminal case ended in acquittal it is not open either for the licensing authority or for the Government to restore the licence.

In between the same parties this Court in the said batch of writ petitions, which was allowed, as regards to the *locus standi* held that the writ petitioners have not challenged the Government order on the ground that they are affected parties but they have questioned the arbitrary exercise of the revisional power resulting in activation of licences after lapse of certain years in favour of the ineligible persons.

My Learned Brother Justice Goda Raghuram considered the said question in reference to the various other judgments and held that the rigid view of *locus standi,* which was hitherto applied, has over the years undergone a pragmatic shift, a shift the contours of which were recorded in a number of decisions on and from **S.P. GUPTA v. UNION OF INDIA**. Petitioner being one of the licensees has a legitimate and legal interest in claiming that no licences be issued except in accordance with the provisions of the Excise Act and the relevant Rules thereunder and that more so when such unlawful grant of licences would adversely impact the viability or profitability of their business. However, the petitioner has taken a specific plea that the restoration of licence in favour of the fourth respondent is unlawful and *ultra vires* the provisions of the Act. Therefore, when the petitioner questions the illegal action of the Government it cannot be said that the petitioner has no *locus standi*.

The Supreme Court in the case of **M.S. JAYARAJ v. COMMISSIONER OF EXCISE, KERALA AND OTHERS** held that in the light of the of the expanded concept of the *locus standi* the writ petition filed questioning the illegal order of the Excise Commissioner permitting to open a shop cannot be thrown away though the rival trader has no *locus standi*. In the light of the aforesaid principles this Court held that the petitioner has the *locus standi* and the similar contentions as raised in this writ petition by the fourth respondent were rejected in the said batch of writ petitions.

Admittedly the licence of the fourth respondent was cancelled by the licencing authority i.e., the Prohibition & Excise Superintendent, Nellore in exercise of his power under Section 31 of the Act for the breach of the terms and conditions of the licence under Section 31 (1) (b) of the Act. Under Section 31 (1) (b) of the Act in the event of any breach by the holder of the licence or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof, the licence is liable to be cancelled. Once the licence has been cancelled under Section 31 of the Act in the departmental proceedings it cannot be restored unless the said order is set aside by the appellate or revisional authority. Under Section 63 or 64 of the Act there is no power to set aside the cancellation order or revise the same after it had attained finality.

Admittedly, in the instant case, the cancellation order of the licence of the fourth respondent as upheld by the Deputy Commissioner of Prohibition & Excise as well as the Commissioner of Prohibition & Excise, was interfered by the revisional order of the Government passed in G.O.Rt.No.952 dated 03.05.2001, and the same was set aside by this Court and thus the cancellation of the licence of the fourth respondent had attained finality. Therefore, this Court held that exercise of the revisional power by the Government in passing the above order is illegal and unsustainable. Admittedly, the said judgment in the batch of writ petitions between the same parties has become final as the fourth respondent has not filed any writ appeal and no SLP is pending before the Supreme Court.

Cancellation of the licence under Section 31 of the Act is different from the criminal proceedings. IL 24 licensee is not entitled to sell liquor in loose and therefore, for contravention of the Rules made under the Act a case was registered for offence under Section 36 (c) of the Act. For the offence under Section 36 (c) of the Act the offender is liable for imprisonment for a term which shall not be less than six months but which shall not exceed two years and with fine which may extend to one thousand rupees. In the instant case, the Criminal Court ultimately found that the fourth respondent has not committed any offence and the said case ended in acquittal. Merely because the criminal proceedings ended in acquittal it cannot be said that the cancellation of the licence, which had attained finality, is liable to be restored in the absence of any specific provisions under the Act. There is no provision under the Act or the Rules made thereunder for restoration of the licence cancelled in case where the criminal proceedings ended in acquittal.

Departmental proceedings are different and distinct from the criminal proceedings.

Chapter VI of the Act deals with licences and permits. The chapter contains Sections 28 to 33 wherein Section 31 of the Act empowers the licencing authority to cancel the licence and Section 32 of the Act empowers the licencing authority to withdraw the licence. Chapter VII of the Act deals with offences and penalties. The chapter contains Section 34 to 50 dealing with different offences. The offences and penalties have nothing to do with the departmental proceedings for breach of terms and conditions of the licence.

Section 64 of the Act reads as follows:

> " The Government may, either *suo motu* or on an application call for and examine the records of any officer in respect of any decision, order or other proceedings made under this Act, including those relating to the grant, issue or refusal of a licence, or permit, for the purpose of satisfying themselves as to correctness, legality or propriety of any such decision or order or as to the regularity of such proceedings and if in any case, it appears, to them that such a decision, order or proceedings should be modified, annulled, reversed or remitted for reconsideration the Government is empowered to pass orders accordingly."

A careful reading of Section 64 of the Act goes to show that the Government is having revisional power to revise any order or decision or other proceedings under the Act including the grant, issue or refusal of the licence or permit for the purpose of satisfying themselves to correctness, legality or propriety of any such decision or order as to the regularity of such proceedings.

Admittedly, the fourth respondent has not filed any revision petition in the instant case questioning the correctness, legality or propriety of the cancellation order, which has attained finality in the year 2001. The earlier exercise of the revision by the Government was held to be illegal and there is no power to review or entertain the second revision of the fourth respondent. The impugned order is not passed in exercise of the power under Section 64 of the Act and even otherwise the said section also does not empower the Government to pass such an order. It is not an order passed on any revision filed by the fourth respondent. However, no such revision is maintainable, as the cancellation order of the licence of the fourth respondent has attained finality. The judgment of this Court in

W.P.No.10638 of 2001, insofar as the petitioner and the fourth respondent is concerned, operates as *res judicata.*

The licence period of IL 24 is for a period of one year only.
Of course, there is a right of renewal subject to fulfilling certain terms and conditions. The Government passed the impugned order pending disposal of the SLP before the Supreme Court and in view of the acquittal in the criminal case. Pendency of the SLP before the Supreme Court in respect of other licensees has nothing to do with the cancellation of the licence of the fourth respondent, which had attained finality, as the fourth respondent has not filed a writ appeal questioning the earlier judgment and no SLP is pending in favour of the fourth respondent.

Under Rule 23 (xiii) of the Rules, the holder of the licence in form IL-24 shall be permitted to sell Indian Liquor and Foreign Liquor in sealed or capsuled bottles in quantities not exceeding 6 Quart bottles of all liquor other than beer and 12 Quart bottles of beer at any time or in any single transaction; but he shall not allow consumption on the licenced premises. The said condition as contained in Rule 23(xiii) of the Rules is also incorporated as condition No.1 of the Licence Form IL-24. As per condition No.10 of the Licence Form IL-24, the licensee shall not act in any manner prejudicial to the interests of the revenues of the Government. Under Rule 35(1) of the Rules, the licensee shall sell the liquor only at the premises specified in the licence. From the aforesaid rules and conditions of the licence, it is clear that the licensee shall not indulge in sale of liquor in loose either in the premises or anywhere. Only the Bar licensees in Form IL-17 whose licence fee is much more higher than the licence fee of IL-24 licensees are permitted to sell liquor in loose on the premises.

Indulging in loose sale of liquor is an offence under Section 36 (c) of the Act as it is a contravention of the Rules. Section 36(c) of the Act is not a compoundable offence. Section 47 of the Act deals with compounding of offences. The reading of Section 47 of the Act goes to show that Section 36 (c) of the Act is not a compoundable offence. Therefore, the rules made under Section 47 of the Act for compounding of offence do not also provide for compounding of offences under Section 36

(c) of the Act. No doubt, where a licence or permit is liable to be cancelled or suspended under Clause (a) or clause (b) of sub-section (1) of Section 31 compoundable under Section 47(1) read with the schedule made in Rule 4 of Andhra Pradesh Excise (Compounding of offences) Rules 1973, but, once the licence is cancelled, there is no such power to compound the offence. Even in respect where the licence is liable to be cancelled or suspended for the offence under Section 36 (c) of the Act, the said offence cannot be compounded under Section 47(1) of the Act. Only in respect of trivial nature of the offences other than the offences under Section 36 (c) of the Act and where the criminal cases are registered for the breach of the terms and conditions of the licence under Section 31(1)(a) or (b) of the Act, then only such of those violations/offences before the cancellation or suspension of the licences are liable for compounding, but not the offences against whom the criminal cases are registered under Section 36 (c) of the Act. Therefore, for this reason also, the licence of the fourth respondent cannot be restored.

Therefore, I am of the opinion that there is no power even to compound the offence in the instant case merely because the case against the 4th respondent for the offence under Section 36 (c) of the Act ended in acquittal. For conducting loose sales, the licensee is liable to be proceeded criminally and also departmentally for contravening the rules. Therefore, acquittal in the criminal case has nothing to do with the cancellation of the licence, which was already made.

Therefore, I am of the opinion that the impugned order of the Government is illegal, unsustainable and contrary to the provisions of the Act and the Rules made thereunder.

Accordingly, the impugned order is set aside and the writ petition is allowed. No costs.

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V. ESWARAIAH, J

April , 2005

Dsk

Note: LR Copy to be marked

(B/o)

Dsk

That Rule Nisi has been made absolute as above.

Witness the Hon’ble Sri Bilal Nazki, the Acting Chief Justice on this

Monday the Twenty Fifth Day of April Two Thousand and Five.

One Fair Copy to the Hon’ble Mr. Justice V. Eswaraiah

(For His Lordhships kind perusal)

To

1 The Special Chief Secretary to Government, Revenue (Excise III)

Department, Government of Andhra Pradesh, Secretariat Buildings,

Hyderabad.

2 The Commissioner of Prohibition & Excise, Prohibition and Excise Building, M.J. Road, Nampally, Hyderabad.

3 The Prohibition and Excise Superintendent, Nellore, Nellore District.

4 Two CD Copies.

5 The Under Secretary, Union of India, Ministry of Law, Justice & Company

Affairs, New Delhi.

6 The Secretary, AP Advocates' Association Library, High Court Buildings,

Hyderabad.